

File: 3645

Australian Competition and Consumer Commission
Email: waterchargerules@accc.gov.au



Thursday 3 March 2016

To Whom It May Concern,

Re. Review of Water Charge Rules – Draft Advice, November 2015

I write in response to the ACCC's call for feedback on its draft advice that sets out the ACCC's draft recommendations for amending the water charge rules, released in November 2015.

Western Murray Irrigation (WMI) provides irrigation and related services to its customers within the Buronga, Coomealla and Curlwaa Irrigation areas of south-west NSW.

Given the significant burden already carried by IIO's like WMI arising from the various ACCC administered rules, the Minister for Agriculture and Water Resources' decision to extend the deadline for the delivery of the ACCC's advice to May 2016 (and subsequent ACCC extension to its deadline for stakeholder submissions) is very much appreciated and appropriate.

Overall, WMI regards the proposed amendments to the rules as counter-productive and inefficient. The draft advice proposes a substantial increase in regulatory burden on member-owned IIO's with little to no supporting evidence for doing so, with many examples of new regulations that have been poorly considered and drafted which will lead to unintended or absurd results. To this end, WMI supports the intent of the National Irrigators' Council (NIC) response to the draft advice.

WMI's primary areas of concern with the draft advice are set out below.

Member-owned operators should be less heavily regulated (from the NIC response)

WMI is not-for-profit and is owned and governed by its customers, significantly diminishing the need for burdensome regulations, such as those now proposed by the ACCC, which are intended to protect customers. Extending price decision regulation (as proposed in the Draft Advice) to areas not already covered increases regulatory cost, increases costs to customers, stifles innovation, and renders Australian industry increasingly globally uncompetitive.

There is no evidence for the regulatory merit of such changes, as evidenced by the ACCC's own independent advice, and why has no Regulation Impact Statement been made available?

Effect is to tell member-owned operators how to charge (from the NIC response)

The combined impact of the ACCC's proposal is increasing inflexibility in the recovery of IIO costs (as WMI's charges only recover the long-term costs of doing business). The combined new regulations offer nothing to IIOs and our customers other than increased costs and increased complexity, both of which are inconsistent with the intent of the review and the rules themselves.

Non-discrimination regulations (rule 10) – Discrimination based on whether a tradeable water right has been traded or transformed (from the NIC response)

WMI hosts a large number of transformed customers. Servicing those customers requires WMI to incur certain administrative costs: in particular, one example is that WMI incurs administrative costs when transformed customers trade water allocation on to WMI's water access entitlement so as to then order it for delivery from WMI. Unless charges that reflect these administrative costs to WMI of providing a service to those customers can be imposed, customers who do not choose to transform will bear these administrative costs. This is a perverse outcome.

Other new non-discrimination regulations (rule 10)

WMI will have to incur significant cost in considering how the new rules apply across its charging structures, adapting its charging arrangements in a way that still preserves revenue, amending its Schedule of Charges, communicating the changes to customers and many other costs which are not yet foreseeable. WMI has different charges across various customer groups based on the location and nature of the service that they receive, and WMI will have to make the difficult and uncertain decision in re-formulating its charging structures as to whether these constitute different classes of service for the purposes of the Water Charge Rules.

Prohibition of certain infrastructure charges (rule 10A) – Operators must be able to require payment of outstanding charges as a condition of approving a trade (from the NIC response)

WMI regularly uses the requirement for customers to pay unpaid charges as a condition of trading entitlements in order to secure payment of, or an arrangement to pay, an overdue account. This is standard commercial practice for a range of industries (supply of a good and/or service is limited until outstanding accounts are brought into line). To suggest that the trade of water rights is such a special case so as to discard this centuries old commercial convention is absurd at best.

Schedule of charges (rule 11) – Increased regulatory burden (from the NIC response)

WMI would see no benefit from the abolition of Network Service Plans, yet would incur the same increased regulatory burden as other larger IIOs which will benefit from that abolition. WMI is in the same position in this regard as many smaller operators throughout New South Wales, which will see a significant increase in the burden of regulation with no concomitant relief. A regulatory review process should not seek to trade one cost against a benefit, where the future benefits and current costs are unevenly distributed.

Schedule of charges (rule 11) – Pass-through requirements (rule 9A) (from the NIC response)

The requirements of this rule represent a considerable undertaking and will add complexity to the schedule of charges. In addition, these new requirements are confusing, ambiguous and difficult to apply in practice. This is particularly the case for costs (such as electricity) that are not fully discoverable until the cost is incurred (which is a defect of the existing rules that has not been addressed by the Draft Advice).

The only feedback received by the ACCC was against increased regulation. It is absurd now to be proposing increased regulation in the name of 'competition'.

Distributions regulations (rule 45) – No stakeholder support for increased regulation (from the NIC response)

No proper economic and/or regulatory argument has been offered for such a large-scale change. It is rejected for not only adding regulatory complexity for no reason, but for stifling both innovation and efforts to minimise costs to customers of the services provided by IIOs.

Termination fees – increased complexity (from the NIC response)

There is again no compelling justification offered for such a significant change, particularly given the extensive arguments offered at the time the rules were first made, both for and against various models.

WMI services over 500 irrigation outlets alone. To meet the requirements of this new rule, each one would become a cost centre in WMI's chart of accounts, requiring unique costing to a scale without precedent in a regulated environment (e.g. do regulated gas and or electricity distributors manage their network costs to the scale required by the ACCC – of course not).

Assessment of costs – ACCC underestimates the initial and ongoing compliance burden (from the NIC response)


WMI is in the process of undertaking a major constitution and contracts review, to ensure compliance with various laws (including the *Water Trading Rules* in the *Basin Plan 2012*, the *Water Charge (Infrastructure) Rules 2010*, the *Water Charge (Termination Fees) Rules 2009* and the *Water Market Rules 2009*). Whilst not yet complete, this activity is estimated to have cost WMI in the vicinity of \$150,000 (plus GST). Fortunately, this is a one-in-ten year exercise that can be amortised over a number of years. However, for a business the size of WMI, this represents a significant regulatory burden, in large part directly attributable to the various forms of regulation the water industry is now covered by.

If the Draft Advice were accepted, costs of this order of magnitude could be expected to be incurred again, as WMI would need to review comprehensively its charging structure and all customer contracts. This cost would only be increased (dramatically I expect) if WMI were to become a Part 7 operator and, based on WMI's current practices, it would become a Part 7 operator (as none of the proposed exceptions would apply).

Overall, the regulatory framework for water is already costly, complex and not well understood. The Draft Advice of the ACCC would only exacerbate that, without driving any significant economic efficiencies arising from the changes.

WMI would be pleased to elaborate on these points if thought appropriate, and can be contacted via me on M. 0439 929 090.

Yours faithfully,
Western Murray Irrigation Limited



Anthony Couroupis
General Manager